REMARKS

I. INTRODUCTION

This Amendment is a full and timely response to the Non-Final Office Action mailed August 10, 2007. Upon entry of this amendment, claims 1-20 are cancelled and claims 21-34 are added. The new claims are fully supported by the specification. *See e.g.* Figs. 8-12 and the accompanying text. Applicants respectfully submit that the claims are in condition for allowance and request that the rejection be withdrawn.

II. OBJECTIONS TO THE SPECIFICATION

The foregoing amendment to the specification updates the status of the related applications and replaces the abstract, as requested by the Examiner.

III. CLAIM REJECTIONS – 35 U.S.C. 101

The Examiner rejected claims 11-20 under 35 U.S.C. 101 alleging that the claimed invention is directed to non-statutory subject matter. The office action states that, "[t]he claim combination recites program code which is not one of statutory subject matter." (Office Action, p. 2.) Claims 11-20 have been cancelled. The preamble of new claims 27-30 recite a "computer readable medium, having computer-executable instructions imposed thereupon for carrying out the following steps," which Applicants respectfully submit is directed to statutory subject matter.

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IV.   CLAIM REJECTIONS – 35 U.S.C. 103

The Office Action rejected Claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over *Basso, et al.* (U.S. Patent No. 6,370,119) in view of *Klinker, et al.* (U.S. Patent No. 7,222,190). This rejection is, respectfully, traversed.

New independent claim 21 recites that an application is available at multiple network locations and defines how to dynamically determine an IP address for the application based on load data and performance data. The claim considers "load data for each of the locations." If the load data indicates an address associated with a first network location, then performance data for a path through each of the network service providers serving the first network location is analyzed to select a path through one of the network service providers.

The specification describes one embodiment where a global content site has two data centers, one in Boston and one in London. *See* [0062-0065] and Figs. 9 and 10. In one of the examples provided in the specification, the L-DNS requests an address for the content site from the name server forwarder 950 associated with the Boston data center. The name server forwarder communicates with the load balancer associated with the Boston data center. The load balancer associated with the Boston data center communicates with the load balancer associated with the London data center and based on load, the Boston data center is selected and a virtual IP address that identifies provider A is returned. The name server forwarder recognizes that the virtual IP address identifies a provider associated with the

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Boston data center and analyzes performance data from the FCP 940 to select the path with

the best performance through the providers serving the Boston data center. *See* Fig. 9.

In another example provided in the specification where the virtual IP address

identifies a provider associated with the London data center, the name server forwarder does

not analyze any performance data and passes the virtual IP address through to the L-DNS.

See Fig. 10. In yet another example where the virtual IP address identifies a provider

associated with the London data center, the name server forwarder communicates with the

name server forwarder associated with the London data center to receive information about

the path with the best performance through the providers serving the London data center.

See Fig. 11.

Neither of the cited references describe the network arrangement or the functions

recited by the claims. In order to disperse the load, the application is available at multiple

network locations, such as a server in different geographic locations. Therefore, claim 21 is

not merely directed to routing over a network service provider, but selecting a route when a

requested application is available on multiple network elements in multiple locations and the

network locations are each accessed by different network service providers. Neither *Klinker*

nor *Basso* teaches dynamic routing to a destination application hosted on multiple network

elements, each of which is accessible through a different network service provider. Claim 21

recites using load data for each of the network locations hosting the application to select a

network location, as well as performance data for the paths through the network service

providers serving the selected network location. In this manner, the claimed invention computes the most optimal path from the requesting source to the destination application and network location.

Independent claims 27 and 31 also recite dynamically determining a path to an application available at multiple distinct network locations where the network locations are served by different service providers and are patentable for at least the same reasons as claim 21.

Claims 22-26 depend from claim 21, claims 28-30 depend from claim 27, and claims 32-34 depend from claim 31. The dependent claims are patentable for at least the reasons given for the independent claims..

V.   CONCLUSION

Claims 21-34 are pending in the application. The Applicants respectfully submit that

claims are allowable. The Examiner is invited and encouraged to contact the undersigned

attorney of record at (404) 685-6799 if such contact will facilitate a Notice of Allowance.

The Commissioner is hereby authorized to charge any additional fees, any deficiency, or

credit any overpayment, to Deposit Account No. 11-0855.

Respectfully submitted,

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